Roman law, where it originated; and by which an adopted child seems to have gained the inheritable capacity of a blood relation.[8] But the better view appears to be that, as adoption is distinctly in derogation of the common law, and the common-law rights of other relatives, the statutes must be strictly construed and the child given inheritable capacity only when there is an express direction to that effect.[9] A foreigner's adopted child must also be denied capacity if, while recognizing the right of inheritance of adopted children, the statutes apply, or are construed to apply, only to adoption proceedings provided by that state. In a recent case succession to land was denied in the state of the situs, where the statute required acknowledgment and registration in the probate court as the act of adoption.[10] *Brown* v. *Finley*, 47 So. 577 (Ala.). As the law of the domicil and of the situs concurred in allowing adopted children to inherit, the result seems only to be justified on a needlessly narrow construction of the statute.[11]

RECEIVERS' CERTIFICATES. — Since the decision in the leading case of *Meyer* v. *Johnston*,[1] it is undoubted law that, when it is necessary for the preservation of the property, railroad receivers have power to issue, with the consent of a court of chancery, receivers' certificates to become a first lien on the property even against the will of the mortgagees whose priority is thus divested. This practice may be defended on the theory that the court, having obtained control of the *res*, must for the protection of all parties interested see that it does not diminish in value.[2] The courts, however, have not limited the issue of certificates to that actually needed for the preservation of the property, but have extended the doctrine of *Meyer* v. *Johnston* until receivers have been given power to issue certificates for almost any purpose. As the authorities now stand, certificates are issued under the pretense of preservation to complete work already begun,[3] to buy new rolling stock,[4] and indeed some cases have gone so far as to allow certificates to be issued to pay off wages accrued before the receiver was appointed, at the cost of preferring unsecured to secured creditors.[5] Those courts which have gone to this extent, groping for a satisfactory reason upon which to base their decisions, have drawn an unwarranted analogy to the doctrine of salvage in admiralty law.

This practice should certainly not be extended, for the power of a court of chancery to divest the lien of prior encumbrancers without their consent is difficult to defend upon any sound principle of legal reasoning. The undertaking of new enterprises should at any rate be no justification. It is certain that a railroad upon finding itself in distress could not prefer those coming

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[8] Markover *v.* Krauss, 132 Ind. 294. See Hunter, Rom. Law, 3 ed., 203–4.

[9] Keegan *v.* Geraghty, 101 Ill. 26. It is on this principle that where the right to inherit from the parent is given, the child cannot inherit from other relatives of the parent unless the statutes so provide. *Cf.* N. Y. Life Ins., etc., Co. *v.* Viele, 161 N. Y. 11.

[10] Ala. Civ. Code, 1907, § 5202.

[11] Ross *v.* Ross, 129 Mass. 243; Gray *v.* Holmes, 57 Kan. 217.

[1] 53 Ala. 237.

[2] Wallace *v.* Loomis, 97 U. S. 146.

[3] Bank of Montreal *v.* R. R. Co., 48 Ia. 518.

[4] Miltenberger *v.* Logansport R. R. Co., 106 U. S. 286.

[5] Union Trust Co. *v.* Illinois Midland R. R. Co., 117 U. S. 434; Miltenberger *v.* Logansport R. R. Co., *supra*.

to its assistance to its former secured creditors without the latter's consent; for such an act would clearly impair the obligation of its contracts. And since the Constitution of the United States forbids a state to pass an act which would have such an effect, it is difficult to see how a court — which is only one branch of the government of a state — can have a power denied to the state itself. The practice has been defended on the ground that railroads are public in their nature and that the public would suffer great inconvenience and loss if these improvements were not undertaken.[6] But in reply it may be said — and the argument seems unanswerable — that the security of a debt is itself property, and the divesting of its priority for the benefit of the public is the taking of property for a public use for which the public should render compensation.[7]

It has been the almost universal rule of equity to distinguish between quasi-public and private corporations, and in the latter to allow the issue of certificates only for the purpose of maintaining and preserving the property. It is as indefensible in theory to divest vested rights without the lienholders' consent in public service corporations as in private corporations; and although on the authorities it is well settled that receivers of public service corporations have power to issue certificates for purposes other than the physical preservation of the property, a limitation on that power in private corporations should be looked on with approval. In a recent case, however, the New Jersey Chancery Court has extended this power to a point far beyond any that has yet been reached. *Lockport Felt Co.* v. *United Box Board and Paper Co.*, 70 Atl. 980. A receiver of an insolvent private corporation composed of eighteen mills obtained permission of the court to issue certificates to provide a fund for the paying of an installment of the bonded indebtedness of one of the mills which was subject to immediate foreclosure in case of default; such certificates to become a lien on all of the other mills prior to that of the subsisting mortgage. The court granted this authority on the ground that such a course was necessary for the preservation of the property. It is difficult to follow the reasoning which underlies such an extension of the general doctrine. "Preservation of property," as interpreted by the courts, has never meant preservation from the claims of a mortgagee, but preservation from physical destruction.[8]

DEPENDENT RELATIVE REVOCATION OF WILLS. — The doctrine of dependent relative revocation of wills is undoubtedly closely associated with the notion of a conditional revocation. It is difficult, however, to define its exact scope or to deduce from the authorities any satisfactory general principles by which the various classes of cases which have applied the doctrine may be reconciled. The decisions are not harmonious and the opinions are frequently misleading. But much of the confusion is unquestionably due to a failure by many courts to distinguish carefully between a conditional and an absolute revocation.

There may well be a true conditional revocation. A typical case is where a testator makes the destruction of his will depend for its operation upon the efficacy of an intended new disposition. It is clear that in such circum-

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[6] Meyer *v.* Johnston, *supra.*

[7] See dissenting opinion of Walker, J., in Humphreys *v.* Allen, 101 U. S. 490.

[8] Raht *v.* Attrill, 106 N. Y. 423; Farmers, etc., Trust Co. *v.* Coal Co., 50 Fed. 481; Hooper *v.* Central Trust Co., 81 Md. 559, 591.